

1 SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 443

3 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

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10 AN ACT

11 RELATING TO CRIME; ENUMERATING THE UNDERLYING CRIMINAL OFFENSES
12 FOR WHICH SENTENCING MAY BE INCREASED IF THE CRIME IS PROVEN TO
13 BE A HATE CRIME.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 31-18B-3 NMSA 1978 (being Laws 2003,
17 Chapter 384, Section 3, as amended) is amended to read:

18 "31-18B-3. HATE CRIMES--NONCAPITAL FELONIES,
19 MISDEMEANORS OR PETTY MISDEMEANORS COMMITTED BECAUSE OF THE
20 VICTIM'S ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL
21 ORIGIN, ANCESTRY, AGE, DISABILITY, GENDER, SEXUAL ORIENTATION
22 OR GENDER IDENTITY--ALTERATION OF BASIC SENTENCE.--

23 A. When a separate finding of fact by the court or
24 jury shows beyond a reasonable doubt that an offender committed
25 a noncapital felony motivated by hate, including dangerous use

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underscored material = new
[bracketed material] = delete

1 of explosives; breaking and entering; criminal damage to
2 property; unauthorized graffiti on personal or real property;
3 desecration of a church; larceny; arson; negligent arson;
4 aggravated arson; use of telephone to terrify, intimidate,
5 harass, annoy or offend; and bomb scares, the basic sentence of
6 imprisonment prescribed for the offense in Section 31-18-15
7 NMSA 1978 may be increased by one year. An increase in the
8 basic sentence of imprisonment pursuant to the provisions of
9 this subsection shall be in addition to an increase in a basic
10 sentence prescribed for the offense in Section 31-18-17 NMSA
11 1978. A sentence imposed pursuant to the provisions of this
12 subsection [~~may~~] shall include an alternative sentence that
13 requires community service, treatment, education or any
14 combination thereof that relates to the impact, intention or
15 nature of the original hate crime. The court [~~may~~] shall
16 suspend or defer any or all of the sentence or grant a
17 conditional discharge, unless otherwise provided by law.

18 B. If a finding was entered in a previous case that
19 the offender was convicted for committing a crime that was
20 motivated by hate, including dangerous use of explosives;
21 breaking and entering; criminal damage to property;
22 unauthorized graffiti on personal or real property; desecration
23 of a church; larceny; arson; negligent arson; aggravated arson;
24 use of telephone to terrify, intimidate, harass, annoy or
25 offend; and bomb scares, and if a separate finding of fact by

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1 the court or jury shows beyond a reasonable doubt that in the
 2 instant case the offender committed a noncapital felony that
 3 was motivated by hate, including dangerous use of explosives;
 4 breaking and entering; criminal damage to property;
 5 unauthorized graffiti on personal or real property; desecration
 6 of a church; larceny; arson; negligent arson; aggravated arson;
 7 use of telephone to terrify, intimidate, harass, annoy or
 8 offend; and bomb scares, the basic sentence of imprisonment
 9 prescribed for the offense in Section 31-18-15 NMSA 1978 may be
 10 increased by two years. An increase in the basic sentence of
 11 imprisonment pursuant to the provisions of this subsection
 12 shall be in addition to an increase in a basic sentence
 13 prescribed for the offense in Section 31-18-17 NMSA 1978. A
 14 sentence imposed pursuant to the provisions of this subsection
 15 [~~may~~] shall include an alternative sentence that requires
 16 community service, treatment, education or any combination
 17 thereof that relates to the impact, intention or nature of the
 18 original hate crime. The court [~~may~~] shall suspend or defer
 19 any or all of the sentence, or grant a conditional discharge
 20 unless otherwise provided by law.

21 C. If the case is tried before a jury and if a
 22 prima facie case has been established showing that in the
 23 commission of the offense the offender was motivated by hate,
 24 the court shall submit the issue to the jury by special
 25 interrogatory. If the case is tried by the court and if a

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1 prima facie case has been established showing that in the
2 commission of the offense the offender was motivated by hate,
3 the court shall decide the issue and shall make a separate
4 finding of fact regarding the issue. If the court or jury
5 determines that the offender is guilty of the crime and finds
6 beyond a reasonable doubt that the offender was motivated by
7 hate, the court shall include that determination in the
8 judgment and sentence.

9 D. When a petty misdemeanor or a misdemeanor is
10 motivated by hate, the basic sentence of imprisonment
11 prescribed for the offense in Section 31-19-1 NMSA 1978 may
12 include an alternative sentence that requires community
13 service, treatment, education or any combination thereof. The
14 court [~~may~~] shall suspend or defer any or all of the sentence
15 or grant a conditional discharge, unless otherwise provided by
16 law."